

RONALD RAMOS, on behalf of himself, and) Case No. '16CV0279 BEN NLS
all others similarly situated,)
)
) **CLASS ACTION**
Plaintiff,)
)
) **COMPLAINT FOR VIOLATIONS OF:**
vs.)
)
) 1. NEGLIGENT VIOLATIONS OF
CASH NET USA; CNU ONLINE) THE TELEPHONE CONSUMER
HOLDINGS, LLC; DOES 1-50 INCLUSIVE) PROTECTION ACT [47 U.S.C.
) §227 ET SEQ.]
) 2. WILLFUL VIOLATIONS OF
Defendants.) THE TELEPHONE CONSUMER
) PROTECTION ACT [47 U.S.C.
) §227 ET SEQ.]
)
) **DEMAND FOR JURY TRIAL**
)
)
)
)

NATURE OF THE CASE

1. Plaintiff brings this action for himselfN and others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Cash Net USA and CNU Online Holdings, LLC (hereinafter referred to in the collective as

1 “Defendants”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s
2 cellular telephone in violation of the Telephone Consumer Protection Act, 47. U.S.C. § 227 *et*
3 *seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

4 **JURISDICTION & VENUE**

5 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident
6 of California, seeks relief on behalf of a Class, which will result in at least one class member
7 belonging to a different state than that of Defendants, who are companies which are Incorporated
8 in the state of Illinois. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation
9 of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the
10 \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and
11 the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and
12 this Court has jurisdiction.

13 3. Venue is proper in the United States District Court for the Southern District of
14 California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a) because Defendants do
15 business within the state of California and Plaintiff resides within the county of San Deigo.

16 **PARTIES**

17 4. Plaintiff, Ronald Ramos, is a natural person residing in San Marcos, California
18 and is a “person” as defined by 47 U.S.C. § 153 (10).

19 5. Defendant CASH NET USA is a “person” as defined by 47 U.S.C. § 153 (10).

20 6. Defendant CNU ONLINE HOLDINGS, LLC is a “person” as defined by 47
21 U.S.C. § 153 (10).

22 7. Plaintiff is informed and believes that at all relevant times, each and every
23 Defendant was acting as an agent and/or employee of each of the other Defendants and was acting
24 within the course and scope of said agency and/or employment with the full knowledge and
25 consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts
26 and/or omissions complained of herein was made known to, and ratified by, each of the other
27 Defendants.
28

1 8. Plaintiff is informed and believes that at all relevant times, Defendant acted as
2 Amazon's agent by receiving a financial benefit of numerous transactions between Defendant
3 and its customers.

4 **FACTUAL ALLEGATIONS**

5 9. Beginning in or around August 2015, Defendant contacted Plaintiff on his cellular
6 telephone number ending in -1554, in an attempt to solicit business.

7 10. Defendant contacted or attempted to contact Plaintiff from telephone number
8 (866) 898-9430.

9 11. Defendant used an "automatic telephone dialing system", as defined by *47 U.S.C.*
10 § 227(a)(1) to place its call to Plaintiff seeking to solicit business.

11 12. Defendant utilized an "artificial or prerecorded voice" as prohibited by *47 U.S.C.*
12 § 227(b)(1)(A).

13 13. Defendant's calls constituted calls that were not for emergency purposes as
14 defined by *47 U.S.C. § 227(b)(1)(A)*.

15 14. Defendant's calls were placed to telephone number assigned to a cellular
16 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to *47 U.S.C. §*
17 *227(b)(1)*.

18 15. Plaintiff is not a customer of Defendant's services and has never provided any
19 personal information, including his cellular telephone number, to Defendant for any purpose
20 whatsoever. Accordingly, Defendant never received Plaintiff's "prior express consent" to
21 receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on
22 her cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

23 **CLASS ALLEGATIONS**

24 16. Plaintiff brings this action on behalf of himself and all others similarly situated,
25 as a member of the proposed class (hereafter "The Class") defined as follows:

26 All persons within the United States who received any
27 solicitation/telemarketing telephone calls from Defendant to said
28 person's cellular telephone made through the use of any automatic
telephone dialing system or an artificial or prerecorded voice and

1 such person had not previously consented to receiving such calls
2 within the four years prior to the filing of this Complaint

3 17. Plaintiff represents, and is a member of, The Class, consisting of All persons
4 within the United States who received any collection telephone calls from Defendant to said
5 person's cellular telephone made through the use of any automatic telephone dialing system or
6 an artificial or prerecorded voice and such person had not previously not provided their cellular
7 telephone number to Defendant within the four years prior to the filing of this Complaint.

8 18. Defendants, their employees and agents are excluded from The Class. Plaintiff
9 does not know the number of members in The Class, but believes the Class members number in
10 the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the
11 expeditious litigation of the matter.

12 19. The Class is so numerous that the individual joinder of all of its members is
13 impractical. While the exact number and identities of The Class members are unknown to
14 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is
15 informed and believes and thereon alleges that The Class includes thousands of members.
16 Plaintiff alleges that The Class members may be ascertained by the records maintained by
17 Defendant.

18 20. Plaintiff and members of The Class were harmed by the acts of Defendant in at
19 least the following ways: Defendant illegally contacted Plaintiff and Class members via their
20 cellular telephones thereby causing Plaintiff and Class members to incur certain charges or
21 reduced telephone time for which Plaintiff and Class members had previously paid by having to
22 retrieve or administer messages left by Defendant during those illegal calls, and invading the
23 privacy of said Plaintiff and Class members.

24 21. Common questions of fact and law exist as to all members of The Class which
25 predominate over any questions affecting only individual members of The Class. These common
26 legal and factual questions, which do not vary between Class members, and which may be
27 determined without reference to the individual circumstances of any Class members, include, but
28 are not limited to, the following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant made any solicitation/marketing call (other than a call made for emergency purposes or made with the prior express consent of the called party) to a Class member using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;
- b. Whether Plaintiff and the Class members were damages thereby, and the extent of damages for such violation; and
- c. Whether Defendants should be enjoined from engaging in such conduct in the future.

22. As a person that received numerous collection calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The Class.

23. Plaintiff will fairly and adequately protect the interests of the members of The Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

24. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

25. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially

1 impair or impede the ability of such non-party Class members to protect their interests.

2 26. Defendant has acted or refused to act in respects generally applicable to The Class,
3 thereby making appropriate final and injunctive relief with regard to the members of the
4 California Class as a whole.

5 **FIRST CAUSE OF ACTION**

6 **Negligent Violations of the Telephone Consumer Protection Act**

7 **47 U.S.C. §227 et seq.**

8 27. Plaintiff repeats and incorporates by reference into this cause of action the
9 allegations set forth above at Paragraphs 1-28.

10 28. The foregoing acts and omissions of Defendants constitute numerous and
11 multiple negligent violations of the TCPA, including but not limited to each and every one of
12 the above cited provisions of 47 U.S.C. § 227 et seq.

13 29. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et seq.,
14 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each
15 and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

16 30. Plaintiff and the Class members are also entitled to and seek injunctive relief
17 prohibiting such conduct in the future.

18 **SECOND CAUSE OF ACTION**

19 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

20 **47 U.S.C. §227 et seq.**

21 31. Plaintiff repeats and incorporates by reference into this cause of action the
22 allegations set forth above at Paragraphs 1-32.

23 32. The foregoing acts and omissions of Defendants constitute numerous and
24 multiple knowing and/or willful violations of the TCPA, including but not limited to each and
25 every one of the above cited provisions of 47 U.S.C. § 227 et seq.

26 33. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227
27 et seq., Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages,
28 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

34. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendants for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendants' negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendants' willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 2nd day of February, 2016.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff